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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CANON U.S.A., INC.,

Plaintiff,

-v-

SYSOSEX GOVERNMENT SERVICES, INC.,

Defendant.

Case No.

COMPLAINT

Plaintiff Canon U.S.A., Inc. (“Canon USA”), by its attorneys, Dorsey & Whitney LLP, for its Complaint against Defendant Sysorex Government Services, Inc. (“Sysorex”), alleges as follows:

1. This is a civil action for breach of contract and account stated arising out of Sysorex’s failure to pay Canon USA the agreed-upon charges for Canon USA’s provision of service and replacement part coverage to Sysorex for various pieces of equipment pursuant to the terms and conditions of two service agreements (collectively, the “Agreements”).

PARTIES, JURISDICTION, AND VENUE

2. Canon USA is a New York corporation having its principal place of business at One Canon Park, Melville, New York 11747.

3. Upon information and belief, Sysorex is a Virginia corporation having its principal

place of business at 13880 Dulles Corner Lane, Suite 175, Herndon, Virginia 20171.

4. Both Agreements provide that they are “made within the State of New York” and that the “Agreement[s] and any dispute, claim or controversy between the parties arising out of or relating to th[e] Agreement[s] will be governed by and construed in accordance with the laws of the State of New York without regard to its conflict of laws provisions.”

5. Both Agreements provide that Sysorex “consents to the exclusive jurisdiction and venue of the federal and state courts located in Suffolk County, New York.”

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because the action is between a citizen of the State of New York and a citizen of another state, and the amount in controversy is in excess of \$75,000, exclusive of interest and costs.

7. This Court has personal jurisdiction over Sysorex for purposes of this action: (a) pursuant to CPLR § 302 by virtue of Sysorex’s transaction of business within the State of New York, including its entry into the Agreements within the State of New York; and (b) pursuant to Sysorex’s irrevocable and unconditional consent to the personal jurisdiction of this Court in accordance with the forum-selection provision of the Agreements.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), and pursuant to Sysorex’s irrevocable and unconditional consent to this Court as a proper venue for any lawsuit between the parties.

FACTUAL ALLEGATIONS

9. Canon USA imports, markets, distributes, and sells genuine Canon-brand products intended for use and resale in the United States. Canon USA is the exclusive wholesale distributor of Canon-brand products, including Canon-brand full body scanners, in North America.

10. Canon USA offers service, maintenance, and repair services to its customers for

Canon-brand equipment.

11. Upon information and belief, Sysorex provides security and technology services to its customers through arrangements with other providers like Canon USA. Of particular relevance to this case, upon information and belief, Sysorex has provided such services to the United States Department of Justice's Bureau of Prisons and the Sherriff's Office of Fayette County, Ohio.

The Agreements Between Canon USA and Sysorex

12. On or about September 29, 2022, Sysorex entered into a service agreement with Canon USA, pursuant to which Canon USA provided service and replacement part coverage under its Platinum Service Plan for the Canon-brand equipment listed in Exhibit A of that agreement, including SecurPASS full body scanners, intended for use at federal Bureau of Prisons facilities (the "BOP Agreement").

13. The BOP Agreement required Sysorex to pay a "Total Annual Price" of \$1,261,400.00 for service and replacement part coverage for the October 1, 2022 through September 30, 2023 Term of the BOP Agreement, payable in 12 monthly installments of \$105,166.66.

14. The BOP Agreement provides that Sysorex "will be billed monthly in advance of each upcoming month" and that invoices "are due and payable . . . within thirty (30) days of the invoice date," with that due date defined as the "Due Date."

15. The BOP Agreement provides as follows regarding termination: "Either party may terminate this Agreement in the event that the other party materially breaches any of the terms or conditions of this Agreement and fails to cure said breach within thirty (30) days after its receipt from the non-breaching party of written notice outlining such breach." The BOP Agreement also provides that "[m]aterial breach, for purposes of this Agreement, means a breach of any term or

condition of this Agreement, including, without limitation, [Sysorex's] timely payment of all amounts due under this Agreement.”

16. On or about March 27, 2023, Sysorex entered into a service agreement with Canon USA regarding a single SecurPASS full body scanner to be used by the sheriff's office in Fayette County, Ohio at the Fayette County Jail (the “Fayette County Agreement”).

17. The Fayette County Agreement required Sysorex to pay a “Total Annual Price” of \$12,000.00 for service and replacement part coverage for the March 28, 2023 through March 27, 2024 Term of the Fayette County Agreement, payable in a single payment.

18. The Fayette County Agreement provides that Sysorex “will be billed annually” and that Canon USA “will not be obligated to commence performance pursuant to this Agreement until the initial . . . payment is received” by Canon USA.

19. Both Agreements provide that a “a late charge of 1.5% per month (or the maximum legal interest rate allowed by applicable law, if less) will be assessed for payments not received by the Due Date.”

20. Both Agreements provide that “[i]f payment is delinquent and cannot be collected on demand or during the cure period . . ., [Sysorex] agrees to pay all costs and expenses incurred by [Canon USA], including, without limitation, reasonable attorney's fees and court costs, in connection with [Canon USA's] efforts to collect any payment due by [Sysorex] pursuant to this Agreement.”

Sysorex's Breaches of the Agreements

21. Canon USA fully performed its obligations under the BOP Agreement by providing service and replacement parts on behalf of Sysorex at the specified Bureau of Prisons sites around

the United States throughout the term of the BOP Agreement.

22. Canon USA has fully performed its obligations under the Fayette County Agreement by providing service and replacement parts on behalf of Sysorex at the Fayette County Jail from the beginning of the term of the Fayette County Agreement through to today.

23. Canon USA issued monthly invoices to Sysorex pursuant to the BOP Agreement throughout its Term.

24. Canon USA issued an invoice to Sysorex pursuant to the Fayette County Agreement at the beginning of its Term.

25. Sysorex made its monthly installment payments, as required by the BOP Agreement, for the period beginning on October 1, 2022 and ending on March 31, 2023, but then stopped making payments for the period beginning on April 1, 2023 and ending on September 30, 2023.

26. Sysorex did not pay the \$12,000 Total Annual Price pursuant to the Fayette County Agreement within 30 days after its receipt of an invoice on March 27, 2023.

27. On August 9, 2023, Canon USA provided Sysorex with written notice “of its material breach of the [BOP] Agreement due to its failure to make timely payments to [Canon USA] as required under the [BOP] Agreement” (the “Termination Notice”). As of the date of the Termination Notice, Sysorex owed \$525,583.30 in past-due invoices and an additional \$105,116.66 for September 2023 services pursuant to the BOP Agreement. The Termination Notice informed Sysorex that the BOP Agreement would be terminated if Sysorex did not pay these amounts in full by September 29, 2023.

28. The Termination Notice also sought payment of the additional \$12,000 that Sysorex

owed pursuant to the Fayette County Agreement.

29. Despite Canon USA's repeated demands for payment, including the Termination Notice, the cure period provided by the Termination Notice expired without any payments made by Sysorex to Canon USA. Therefore, the BOP Agreement has been terminated.

30. Sysorex has never disputed that it owes the amounts described above to Canon USA.

31. Canon USA continues to fully perform its obligations pursuant to the Fayette County Agreement notwithstanding Sysorex's breach.

32. In sum, Canon USA issued a total of six (6) invoices to Sysorex for the monthly installment payments due under the BOP Agreement for services between April and September 2023 and an additional invoice for the Total Annual Payment due under the Fayette County Agreement. All of those invoices remain unpaid in their entirety.

33. The total amount owed by Sysorex is \$642,699.96, exclusive of accrued late fees and interest and Canon USA's costs and attorneys' fees.

CAUSES OF ACTION

COUNT I **(Breach of the BOP Agreement)**

34. Canon USA repeats and re-alleges each and every allegation set forth in paragraphs 1-33, inclusive, with the same force and effect as if such allegations were fully set forth herein.

35. Canon USA fully performed its obligations under the BOP Agreement, including by providing service and replacement parts.

36. Sysorex breached the BOP Agreement by failing to pay to Canon USA the agreed-upon monthly installment payments invoiced by Canon USA to Sysorex as set forth above.

37. As a direct and proximate result of Sysorex's breaches of the BOP Agreement,

Canon USA has suffered damages of, and is entitled to recover from Sysorex, not less than the sum of \$630,699.96, plus accrued late fees as specified in the BOP Agreement, interest at the maximum rate authorized by applicable law, and reasonable attorneys' fees and associated costs and expenses incurred in connection with Canon USA's preparation, filing, and prosecution of this action.

COUNT II
(Breach of the Fayette County Agreement)

38. Canon USA repeats and re-alleges each and every allegation set forth in paragraphs 1-37, inclusive, with the same force and effect as if such allegations were fully set forth herein.

39. Canon USA has fully performed its obligations under the Fayette County Agreement, including by providing service and replacement parts.

40. Sysorex breached the Fayette County Agreement by failing to pay to Canon USA the Total Annual Payment of \$12,000.00 owed under the Fayette County Agreement.

41. As a direct and proximate result of Sysorex's breaches of the Fayette County Agreement, Canon USA has suffered damages of, and is entitled to recover from Sysorex, not less than the sum of \$12,000.00, plus accrued late fees as specified in the BOP Agreement, interest at the maximum rate authorized by applicable law, and reasonable attorneys' fees and associated costs and expenses incurred in connection with Canon USA's preparation, filing, and prosecution of this action.

COUNT III
(Account Stated)

42. Canon USA repeats and re-alleges each and every allegation set forth in paragraphs 1-41, inclusive, with the same force and effect as if such allegations were fully set forth herein.

43. Canon USA presented an account of what Sysorex owed to it by issuing invoices

for the services that Canon USA has rendered.

44. Sysorex accepted the invoices as correct and agreed to pay the amounts stated in the invoices.

45. Therefore, Canon USA has suffered damages of, and is entitled to recover from Sysorex, not less than the sum of \$642,699.96, plus accrued interest at the maximum rate authorized by applicable law.

WHEREFORE, Canon USA prays for the entry of a judgment against Sysorex, as follows:

1. Awarding Canon USA compensatory damages of not less than the sum of \$642,699.96 incurred as a consequence of Sysorex's failure to pay the issued, outstanding, and overdue payments owed to Canon USA pursuant to the Agreements, plus accrued late fees as specified in Agreements and interest at the maximum rate authorized by applicable law;

2. Awarding Canon USA its reasonable attorneys' fees and associated costs and expenses incurred by Canon USA in connection with its preparation, filing, and prosecution of this action; and

3. Awarding Canon USA such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 26, 2023

DORSEY & WHITNEY LLP

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